

Arent Fox

May 24, 2010

VIA FCC ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Office of the Secretary, Room TW B204
Washington DC 20554

Jonathan E. Canis

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Re: Written Ex Parte Communication by the Oglala Sioux Tribe in
Cellco Partnership d/b/a Verizon Wireless
WT Docket No. 09-104

Dear Ms. Dortch:

This written *ex parte* filing is made on behalf of the Oglala Sioux Tribe (“OST”) of the Pine Ridge Reservation in South Dakota, by their undersigned counsel. The OST submit this filing in response to written and verbal *ex parte* presentations that AT&T and Verizon jointly made to the FCC on 5/20/2010.

The attached PowerPoint presentation and appended documents discuss the following: As detailed in the OST’s previous *ex parte* filings dated 3/10/2010 and 5/3-4/2010, Verizon’s proposed transfer of the CMRS network and related spectrum that provides basic service to the Tribe would void the OST’s rights under the Tate Woglaka Service Agreement (“TWSA”). The OST negotiated the TWSA with Western Wireless, and it has governed the provision of basic phone service on Pine Ridge by Western Wireless and its successors for the last decade. Western Wireless/Alltel/Verizon has received over \$46 million in USF payments as a result of providing this service on the Reservation. By refusing negotiations, and by launching an aggressive campaign of harassing litigation, Verizon is attempting to “run out the clock” until it receives Commission authorization to transfer the CMRS assets covering the Pine Ridge Reservation to AT&T, thereby voiding the TWSA.

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In its most recent filing, Verizon has told this commission that, post-transfer, AT&T will be bound by the TWSA, and will continue to provide service to the Tribe, as service has been provided over the last 10 years. However, Verizon's statements are belied by AT&T's own words. In AT&T's 5/20 *ex parte*, filed in WT Docket 09-104, and in written correspondence to the OST, AT&T makes it absolutely clear that it will not continue to provide service on the Reservation at current discounted rates, and will not accept carrier of last resort responsibilities on the Reservation. AT&T has also made absolutely clear that it will not maintain the CDMA network that currently is the primary or sole source of basic phone service to 75% of the Pine Ridge residents.

The Tribe asks the Commission to withhold authorization to Verizon to transfer the Pine Ridge spectrum to AT&T until reasonable terms are established, either through negotiation or adjudication by the Tribal Court. The Tribe does not wish to delay the transfer of any spectrum other than that which serves the Pine Ridge Reservation.

In accordance with § 1.1206 of the Commission's rules, this letter and a copy of the presentation are being filed electronically in the above-captioned docket.

Respectfully submitted,



Jonathan E. Canis

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OGLALA SIOUX TRIBE

Response to the Recent
Ex Parte Filings of AT&T and Verizon re
Transfer of CMRS Spectrum
Serving the Pine Ridge, S.D. Reservation
WT Docket No. 09-104

Presented by

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May 24, 2010

Summary

- This *ex parte* filing is made by the Oglala Sioux Tribe (“OST”) of the Pine Ridge Reservation in South Dakota, in response to written and verbal *ex parte* presentations that AT&T and Verizon jointly made to the FCC on 5/20/2010.
- As detailed in the OST’s previous *ex parte* filings dated 3/10/2010 and 5/3-4/2010, Verizon’s proposed transfer of the CMRS network and related spectrum that provides basic service to the Tribe would void the OST’s rights under the Tate Woglaka Service Agreement (“TWSA”). The OST negotiated the TWSA with Western Wireless, and it has governed the provision of basic phone service on Pine Ridge by Western Wireless and its successors for the last decade. Western Wireless/Alltel/Verizon have received over \$46 million in USF payments as a result of providing this service on the Reservation.
- By refusing negotiations, and by launching an aggressive campaign of harassing litigation, Verizon is attempting to “run out the clock” until it receives Commission authorization to transfer the CMRS assets covering the Pine Ridge Reservation to AT&T, thereby voiding the TWSA.
- In its most recent filing, Verizon has told this commission that, post-transfer, AT&T will be bound by the TWSA, and will continue to provide service to the Tribe, as service has been provided over the last 10 years.
- However, Verizon’s statements are belied by AT&T’s own words. In AT&T’s 5/20 *ex parte*, and in written correspondence to the OST, AT&T makes it absolutely clear that it will not continue to provide service on the Reservation at current discounted rates, and will not accept carrier of last resort responsibilities on the Reservation. AT&T has also made absolutely clear that it will not maintain the CDMA network that currently is the primary or sole source of basic phone service to 75% of the Pine Ridge residents.
- The Tribe asks the Commission to withhold authorization to Verizon to transfer the Pine Ridge spectrum to AT&T until reasonable terms are established, either through negotiation or adjudication by the Tribal Court.
- The Tribe does not wish to delay the transfer of any spectrum other than that which serves the Pine Ridge Reservation.

AT&T & Verizon: Working Together to Steal From the Oglala Sioux Tribe

- **After over a year of avoidance, expansive litigation, and bad-faith negotiations, it is clear that the country's two largest telephone companies are conspiring to steal from the poorest Native American Tribe in the country one of their very few valuable assets.**
- **Now, they resort to the oldest monopoly trick in the book: "If you don't give us what we want, we'll stop service."**
 - **"At this point, it is only the Tribe's refusal to consent to assignment of the TWSA to AT&T that is jeopardizing continuity of service pursuant to the TWSA."** Verizon 5/20 *ex parte*, PPT, p. 6.
- **The only way to ensure continuous and affordable service to Pine Ridge is for the Tribe to exercise control over the service on its Reservation, which is specifically provided for by the TWSA.**
 - If the spectrum is transferred from Verizon to AT&T, the Tribe will be held hostage to a national carrier's priorities, which are not the Pine Ridge Reservation; this is precisely what the TWSA was designed to avoid by allowing the Tribe to dictate the terms of operation on the Reservation and obtain ownership of the property on the Reservation.
 - AT&T has attempted to placate the Tribe, but has recently demonstrated bad faith in its dealings with the Tribe, which proves that it will likewise exploit its monopoly at the expense of the Tribe, just as Verizon has done.
 - The issues with a national carrier attempting to provide service on Reservation without complying with the TWSA is evidenced by the compliance issues recently found by USAC related to Verizon's provision of Lifeline service on the Pine Ridge Reservation. *See Request for Review by Verizon/Alltel Management Trust of Decision of Universal Service Administrator, WC Docket No. 03-109.*

AT&T & Verizon: Working Together to Steal From the Oglala Sioux Tribe (cont'd)

- **The Commission must deny transfer of the spectrum serving Pine Ridge to AT&T. This is the only way to:**
- Prevent voidance of the contract that has governed service to the Tribe for 10 years, and theft of the Tribe's assets.
 - The TWSA is the reason Verizon has collected over \$40M in USF support, and now that it has greatly benefitted from this Agreement, it is attempting to avoid the associated obligations of operating on the Pine Ridge Reservation.
 - Prevent Verizon from reneging on its obligations, after being enriched by over \$40 Million in USF for providing service on Pine Ridge.
 - In response to Verizon's request to assign the TWSA to AT&T, and as expressly provided for in the TWSA, the Tribe asked Verizon to provide an accounting of the USF and service revenues received. The Tribe first made this request in December 2008 and again in January 2010, but Verizon has refused to provide the Tribe with this information.
 - Allow the Tribe to determine the quality, price and variety of services provided on the Reservation.
 - The TWSA specifically provides for the Tribe to determine the rates and terms and conditions of service, but Verizon has refused to comply with this requirement.
 - Ensure continuous and affordable service to the Reservation in perpetuity.
 - The universal services provided by Verizon are essential services on the Reservation governed by the universal service laws and can not be terminated unless Verizon seeks to relinquish ETC status.
-

AT&T's Fraudulent "Negotiations"

- In late April, AT&T submitted a "Term Sheet" to the OST, proposing how it would provide service on Pine Ridge if it acquired the Verizon spectrum.
- Following the Tribe's presentations to the Commission on May 3-4, AT&T contacted the Tribe to schedule a conference call regarding the Term Sheet.
- On May 6, the OST sent a redlined version of AT&T's Term Sheet to AT&T, showing changes that the Tribe proposed. Parties and their counsel held a conference call later that day.
- On May 13, the Tribe clarified its proposal to AT&T, which incorporated AT&T's comments from the May 6 call, and conducted a second conference call with Wauneta Brown, Troy Hatch and Isabelle Salgado of AT&T. The parties discussed the Tribe's counterproposal at length. Ms. Brown stated that she would have to discuss the proposal with her management, and promised a prompt response.
- To date, AT&T has not responded to the Tribe. Instead, AT&T bypassed the Tribe and filed its proposal directly with the FCC in its 5/20/10 *ex parte*, explaining how AT&T would provide service to the Tribe – without informing the Tribe or soliciting its input.
 - AT&T's actions are an affront to the OST, and demonstrate AT&T's bad faith, both in its purported negotiations with the Tribe, and in its presentations to this Commission.
 - If this is how AT&T conducts "negotiations" with the Tribe, the Tribe expects that this is how AT&T will conduct itself if it ever becomes the monopoly service provider on the Reservation.
 - The arrogance and disrespect that AT&T has shown to the Tribe is inexcusable, and the Tribe will not accept AT&T as the monopoly service provider to the Reservation.
 - AT&T's patent bad faith and misrepresentations are detailed in the following slides.

AT&T's Fraudulent "Negotiations" (cont'd)

➤ What AT&T Told the Tribe – the AT&T "Term Sheet":

- The "Term Sheet" provided to the Tribe in late April dictated to the Tribe a laughably one-sided set of terms that are unacceptable on their face. A copy is attached, and includes the following terms:
 - The Term Sheet never mentions the Tate Woglaka Service Agreement, and does not bind AT&T to it. Instead, it makes clear that AT&T will not accept the terms of the TWSA.
 - AT&T will transfer to the Tribe all towers, cell sites and radios, and the Tribe will "assume all liabilities related to these assets." ¶ 1. NOTE: This imposes maintenance costs on the Tribe, while denying them revenues to pay for it.
 - AT&T will not transfer any spectrum to the Tribe. Rather, the Tribe must acquire its own spectrum "from parties other than AT&T." ¶ 5. NOTE: **This would make the transfer of towers, cell sites and radios of no value!** There is no other spectrum on the Reservation available to the Tribe.
 - AT&T "will not be operating a CDMA network." Nor will AT&T provide "back office services, roaming, switching or other operational support..." for the CDMA network. ¶ 6. NOTE: The Verizon network that has provided service to the tribe for the last decade, and currently, is all CDMA.
 - AT&T will not commit to provide service, or to be a carrier of last resort. Rather, all customer service contracts now served by Verizon will be "transferred" to the Tribe upon closing. ¶ 7.
 - AT&T arrogates to itself an "indefeasible right to use" space on the Tribe's towers at no cost to AT&T. AT&T has the absolute right to "place, operate and maintain" a network on the Reservation, to serve non-Reservation customers. AT&T has roaming rights across the Reservation at no charge to AT&T. AT&T has the right to build additional towers and backhaul facilities where it chooses on the Reservation, and the Tribe has no right to object – the Term Sheet states that the Tribe "will cooperate with and approve any such additional site build-out through an expedited approval process." ¶ 2.
 - AT&T rejects any Tribal authority over the network or services, in direct violation of the TWSA and the FCC order granting Western Wireless ETC status. Any disputes must be resolved by AAA arbitration in South Dakota, outside the Reservation. ¶ 10.
 - AT&T refuses to commit to continuing the \$1 basic service to Pine Ridge residents, which Western Wireless, Alltel and Verizon have been providing since 2001.
 - "AT&T makes no representations about its intent or ability to obtain ETC or broadband stimulus funding." ¶ 4.
- A copy of the AT&T Term Sheet is attached to this filing.

AT&T's Fraudulent "Negotiations" (cont'd)

➤ What the Tribe Proposed to AT&T:

- The OST informed AT&T that the Term Sheet imposed network costs on the Tribe without providing any source of revenues, provided no guarantee of continued service quality and affordability, and completely disregarded Tribal Sovereignty, and so was completely unacceptable.
- The Tribe sent a redlined copy of the Term Sheet back to AT&T, showing the Tribe's terms:
 - The Tribe would establish a Tribally-owned telephone company on the Reservation.
 - The Tribe would obtain ETC status and become eligible for universal service support.
 - Ownership of the spectrum, as well as the network equipment, would pass to the Tribe, so that the Tribe could realize its own revenues.
 - The Tribe would install GSM radios as necessary to allow AT&T to have a GSM presence across the Reservation. The Tribe and AT&T would establish a "most favored" mutual roaming agreement.
 - The Tribe would install any additional towers or radios required by AT&T, using Tribal employees, at commercially reasonable rates.
- The OST later drafted a stand-alone proposal that restated these requirements. Copies of both the redlined Term Sheet and the stand-alone proposal are attached to this filing.

AT&T's Fraudulent "Negotiations" (cont'd)

➤ What AT&T Is Telling the Commission:

- AT&T's new proposal – made to the FCC and not the Tribe – is stated in its May 20 *ex parte* filing. It demonstrates that AT&T still intends to implement the terms of its original Term Sheet, and to renounce the TWSA: (cites are to AT&T's 5/20/2010 *ex parte*)

- "Weasel wording" around the TWSA: "AT&T will offer to undertake the rights and obligations" under the TWSA. § 3(a). What does this mean?
 - AT&T will continue "certain low cost plans" ... "for one year." § 3(d).
 - If AT&T gets ETC status, it will offer "comparable rate plans" (§ 3(a)) until this commitment expires in 3 years. p. 2, ¶ 2.
 - Reservation residents "will have access to" AT&T's advanced 3G services. § 3(d).
 - AT&T retains the Term Sheet language regarding its right to "enter the Reservation to construct, operate, and maintain" network equipment "without any encumbrances." p. 2, ¶ 2.
 - And in case this weasel wording wasn't enough to evade any obligations at all, AT&T throws in this catchall: "AT&T shall inform the Commission promptly of any developments of which AT&T is aware that AT&T reasonably anticipates will materially affect AT&T's ability to fulfill this . . . obligation." p. 2, ¶ 2.

- The 5/20 *ex parte* is evidence of AT&T's anticipatory breach of the TWSA.

AT&T Has Rejected the TWSA

- **As the previous slides show, by its own words, AT&T has made clear that:**
- It will not be bound by the Tate Woglaka Service Agreement.
 - That it will cancel the most critical aspects of the agreement – the \$1 basic service commitment, and the carrier of last resort status – in 1-3 years.
 - That it will not provide basic service on the Reservation unless it obtains ETC funds, and even then it will not accept carrier of last resort status.
 - That it will not commit to provide advanced services on the Reservation under any circumstances.
 - AT&T effectively has announced to the Commission, the Tribe, and the world, its anticipatory breach of the TWSA, should Verizon transfer the Pine Ridge spectrum and network assets to AT&T.

Verizon's Delay Campaign

- **The OST's previous two *ex partes* detailed Verizon's legal actions against the tribe:**
 - Filings in S.D. federal district court to defeat the jurisdiction of Tribal Court.
 - Harassing litigation against the OST's telecom consultant.
 - Verizon has refused to negotiate with the Tribe's telecom consultants and counsel, and instead is litigating in multiple fora.
 - See OST filings: 3/10 *ex parte*, pp. 4-5; 5/3-4 *ex parte*, p. 6.
- **Last Friday, 5/21/10, counsel for Verizon informed OST counsel that they would submit a request to schedule arbitration 2 months from now; at the same time Verizon is contesting the jurisdiction of the Tribal Court, even though it is mandated by the TWSA and the FCC's ECT order.**
 - Verizon obviously is not interested in resolving any of the open issues; rather, it is simply attempting to run out the clock, until it can transfer the Pine Ridge basic service telecom network to AT&T, and void the TWSA and the Tribe's rights under it.

Verizon's 5/20 *Ex Parte* Lies to the FCC

- **Lie 1: AT&T will be bound by the TWSA.** VZ 5/20 *ex parte*, PPT pp. 5-6.
- AT&T's 5/20 *ex parte* refuses to be bound by the TWSA. It is rife with "weasel words" that avoid commitment. (Cites below are to the AT&T 5/20 *ex parte* filing.)
 - AT&T will "offer the same degree of access to services ... as they currently have." §3(c).
 - AT&T will continue "certain low cost rate plans" "without material changes" for one year. §3(d).
 - This "commitment" "shall expire three years after the closing of this transaction." p. 3.
 - These promises are contingent on AT&T having access to enter and build on the Reservation on its terms – the Tribe must give its blanket consent. p. 3.
 - AT&T will seek ETC status. §3(d). It doesn't say what it will do if it is denied USF funds.
 - If anything "materially affect[s] AT&T's ability to fulfill this third commitment," AT&T "shall inform the Commission promptly" p. 3.
 - Does this sound like commitment? Do you expect the Tribe to trust AT&T or Verizon?
 - AT&T's own language confirms it is rejecting the service and pricing obligations imposed by the TWSA.
- **Lie 2: The OST is attempting to stop the transfer of spectrum outside the Reservation...."** VZ 5/20 *ex parte*, PPT p. 3.
- The Tribe has made it clear in court filings and arguments, its prior FCC *ex parte* filing and meetings, and in repeated discussions with Verizon counsel that it has no claims on any spectrum outside Pine Ridge. *E.g.*, OST 5/3-4 *ex parte*, p. 9.
- **Lie 3: The provision of basic phone service on Pine Ridge "is irrelevant to the FCC's public interest review."** VZ 5/20 *ex parte*, PPT p. 2.
- No comment is necessary – the Commission can make this call.

Verizon's 5/20 *Ex Parte* Lies (cont'd)

- **Lie 4: The Tribe has no rights to assets or spectrum under the Service Agreement it negotiated with Western Wireless.** VZ 5/20 *ex parte*, PPT pp. 7-8.
- Verizon quotes language from the TWSA re “the Tribe’s role in provisioning telecommunications service” (p. 8), but ignores the rest of the sentence, which states that the parties will “evaluate options for increasing OGLALA SIOUX TRIBE’s role in the provisioning of telecommunications service to include an ownership interest in a telecommunications system used to provide service on the Reservation.”
 - Verizon quotes the TWSA language re “assuming responsibility for installation and maintenance of On-Site Equipment” (p. 8); but asserts this only applies to customer premises equipment. (p. 8) Is it a reasonable interpretation of the contract that the OST would take on the responsibility and cost of maintaining equipment, but abjure ownership in the network, or the revenues related to the provisioning of the service?
 - To the extent any of the provisions of the TWSA are ambiguous, they must be construed against the drafter – Western Wireless and its successors in interest.
- **Lie 5: “[T]he TWSA provides only that the Tribe has the right to approve any assignment of the agreement, ‘which [approval] shall not be unreasonably withheld or delayed.’”** VZ 5/20 *ex parte*, cover letter p. 2.
- What is the point of an approval provision if the Tribe lacks the ability to deny approval? Under basic principles of contract analysis, is this a reasonable interpretation?
- **Lie 6: Verizon has tried to meet and cooperate, but the Tribe has refused.** VZ 5/20 *ex parte*, PPT p. 10.
- The OST has detailed Verizon’s refusal to talk with its telecom consultant and outside telecom counsel. Indeed, to date, Verizon has not discussed any settlement proposals with the Tribe’s telecom advisor or counsel. OST 5/3-4 *ex parte*, p. 6.
 - The Tribe has detailed Verizon’s refusals to provide the Tribe with a requested accounting of service and USF revenues (OST 5/3-4 *ex parte*, p. 6), and Verizon admits it has refused to provide it. VZ 5/20 *ex parte*, PPT p. 9 & appended 1/13/10 letter of OST to Patrick Philbin.

Relief Requested

- The Tribe asks the Commission to withhold approval of that portion of the former Alltel spectrum that covers the Pine Ridge Indian Reservation in South Dakota — until such time as this issue is resolved, either in Tribal Court or by negotiation.
 - The Tribe has no intention of delaying the broader transfer of Verizon's spectrum to AT&T.
- The Tribe respectfully requests any informal or formal assistance the Commission is willing to provide to ensure continuous, affordable basic phone service on the Reservation in perpetuity, and the deployment of affordable advanced telecommunications services in the future.

ATTACHMENT 1:
AT&T TERM SHEET

Transfer Agreement Term Sheet

April ___, 2010

Parties:	AT&T Mobility LLC (" <u>AT&T</u> ") and the Oglala Sioux Tribe (" <u>OST</u> ")
Assets Transferred to OST:	At the closing of the transaction contemplated by this Term Sheet (the " <u>Closing</u> "), AT&T will transfer to the OST ownership of the cell sites, radios and associated assets and any retail stores (the " <u>Acquired Assets</u> "), in each case located on that certain real property located in Shannon, Jackson, and Bennett Counties, South Dakota, commonly referred to as and within the original exterior boundaries of the Pine Ridge Reservation as more specifically described in the Constitution and Bylaws of the OST (the " <u>Reservation</u> ") and acquired by AT&T from Cellco Partnership, a Delaware general partnership doing business as Verizon Wireless (" <u>Verizon</u> ") pursuant to the Purchase Agreement between AT&T and Verizon, dated as of May 8, 2009 (the " <u>Verizon Purchase Agreement</u> "). The OST will assume all liabilities related to the Acquired Assets at the Closing (the " <u>Assumed Liabilities</u> ").
Access to and Right to Use Tower Space by AT&T:	In exchange for the transfer of the Acquired Assets by AT&T to the OST, and in addition to the assumption of the Assumed Liabilities, at the Closing, the OST will grant AT&T access to and an indefeasible right to use sufficient space on the towers in the Reservation to place, operate and maintain its own cellular equipment in order to serve the Reservation and other AT&T customers who roam in the territory served by the cell sites on the Reservation and to transport calls across the Reservation. AT&T will have the right to maintain and enhance its cellular equipment and the structure of the towers it uses pursuant to the Transfer Agreement, to install backhaul and to access land on the Reservation for the foregoing purposes, in each case at AT&T's sole cost and expense. AT&T will also have the right, at its own initiative and sole cost and expense, to build additional cell sites on the Reservation, and the OST will cooperate with and approve any such additional site build-out through an expedited approval process. AT&T will allow the OST to co-locate at commercially reasonable rates. The OST will operate and maintain its cellular equipment on the towers on which it co-locate at its sole cost and expense.
Transfer Agreement:	AT&T and the OST will negotiate a mutually acceptable Transfer Agreement (the " <u>Transfer Agreement</u> "), which agreement shall contain the terms set forth in this Term Sheet and customary representations and warranties, covenants and other provisions for transactions of this nature.
ETC or Broadband Stimulus Funding:	To the extent the OST requests assistance from AT&T to seek ETC or broadband stimulus funding, AT&T will make reasonable efforts to support any applications for such funding. The OST acknowledges that AT&T makes no representations about its intent or ability to obtain ETC or broadband stimulus funding.

Spectrum:	The OST acknowledges that in order to operate the Acquired Assets it will need to obtain cellular spectrum from parties other than AT&T.
CDMA Network:	The OST acknowledges that AT&T will not be operating a CDMA network. Accordingly, the OST further acknowledges that to the extent the OST requires back office services, roaming, switching or other operational support on a transitional basis, the OST will obtain such transitional services from parties other than AT&T.
Service Agreement:	Concurrent with the execution of the Transfer Agreement, the parties will amend OST's [<i>appropriate description of the service agreement to be inserted</i>] (the " <u>Service Agreement</u> ") with Verizon to provide that the Service Agreement will continue in effect until the earlier of (x) the Closing or (y) the termination of the Transfer Agreement in accordance with its terms. At the Closing, the contracts with customers with a billing address on the Reservation that are currently served under the Service Agreement will be transferred to the OST.
Closing Conditions:	Customary closing conditions for transactions of this type, including, without limitation: (i) regulatory approval (if any) and completion of regulatory filings, (ii) no legal prohibition on the transactions contemplated by the Transfer Agreement, (iii) the closing of the transactions contemplated by the Verizon Purchase Agreement having occurred, (iv) accuracy of each party's respective representations and warranties and (v) compliance by each party with its respective covenants and obligations.
Termination of the Transfer Agreement:	By either party, only upon material breach, failure of the Closing to occur within [4][5] months of the execution of the Transfer Agreement or termination of the Verizon Purchase Agreement.
Arbitration:	Any controversy or claim between the OST and AT&T arising out of or relating to the Transfer Agreement or any other transaction documents will be finally settled by arbitration in [South Dakota] administered by the American Arbitration Association under its Commercial Arbitration Rules then in effect.

Except for the next sentence, this Term Sheet shall not be binding on either the OST or AT&T, and neither party shall have any obligation until the Transfer Agreement or any other definitive transaction documents have been duly executed by both parties. Each of the OST and AT&T agree and acknowledge that the Confidentiality Agreement, dated April 13, 2010, between the OST and AT&T (the "Confidentiality Agreement") shall remain in full force and effect, and be binding upon each of them, following the execution of this Term Sheet, and that this Term Sheet, including the existence thereof, constitutes "Evaluation Material" (as such term is defined in the Confidentiality Agreement).

Upon execution of this Term Sheet, AT&T will commence the preparation of the Transfer Agreement implementing the foregoing terms and reflecting such other terms as the parties may agree.

[Remainder of Page Intentionally Left Blank]

Agreed the ____ day of April 2010 by:

AT&T MOBILITY LLC

Name:

Title:

OGLALA SIOUX TRIBE

Name:

Title:

ATTACHMENT 2:

OST Redlined Changes to AT&T Term Sheet

Transfer Agreement Term Sheet

April __, 2010

Parties: AT&T Mobility LLC ("AT&T") and the Oglala Sioux Tribe ("OST")

Recitals

The OST has exercised jurisdiction over the provision of telecommunications services on the Pine Ridge reservation (see ~~attached OST~~ OST Telecommunications Plan). Consistent with the OST Telecommunications Plan, the Tribe has established a tribally-owned telecommunications system to provide basic telephone, advanced communications, mobile wireless, and other services to tribal members and others residing on the Pine Ridge reservation. The OST has adopted rules and policies governing the provision of telecommunications services on the Pine Ridge reservation that all providers, including the tribally-owned telecommunications provider, must comply with, including, but not limited to, requirements governing imposition of taxes and fees, routing of 911 traffic, and jurisdiction of the Tribal Utilities Commission over service quality and other terms and conditions of service.

Assets Transferred to OST:

At the closing of the transaction contemplated by this Term Sheet (the "Closing"), AT&T will transfer to the OST (i) ownership of the cell sites, radios and associated assets and any retail stores ~~(the "Acquired Assets")~~, and (ii) spectrum used by the transferred cell sites, radios and associated assets subject to approval from the Federal Communications Commission ("FCC"); ~~(collectively, the "Acquired Assets")~~, in each case located on that certain real property located in Shannon, Jackson, and Bennett Counties, South Dakota, commonly referred to as and within the original exterior boundaries of the Pine Ridge Reservation as more specifically described in the Constitution and Bylaws of the OST (the "Reservation") and acquired by AT&T from Cellco Partnership, a Delaware general partnership doing business as Verizon Wireless ("Verizon") pursuant to the Purchase Agreement between AT&T and Verizon, dated as of May 8, 2009 (the "Verizon Purchase Agreement"). The OST will assume all liabilities related to the Acquired Assets at the Closing (the "Assumed Liabilities").

Access to and Right to Use Tower Space by AT&T Rights Provided to AT&T:

In exchange for the transfer of the Acquired Assets by AT&T to the OST, and in addition to the assumption of the Assumed Liabilities, at the Closing, the OST will: (i) install wireless radios and associated electronics to enable ~~grant AT&T access to and an indefeasible right to use sufficient space on the towers in the Reservation to place, operate and maintain its own cellular equipment in order to serve the Reservation and other AT&T customers to who roam in the territory served by the cell sites on the Reservation;~~ and (ii) establish a roaming agreement with AT&T that provides preferential roaming rates based upon the transfer of the Acquired Assets to the OST and to transport calls across the Reservation. AT&T will have the right to maintain and enhance its cellular equipment and the structure of the towers it uses

~~pursuant to the Transfer Agreement, to install backhaul and to access land on the Reservation for the foregoing purposes, in each case at AT&T's sole cost and expense. AT&T will also have the right, at its own initiative and sole cost and expense, to build additional cell sites on the Reservation, and the OST will cooperate with and not unreasonably withhold approval of any such additional sites build-out provided that such cell sites shall be built on tribal land and subject to commercially reasonable rates through an expedited approval process. AT&T will allow the OST to co-locate their equipment on any AT&T antenna towers at commercially reasonable rates. The OST will operate and maintain its cellular equipment on the towers on which it co-locate at its sole cost and expense.~~

Transfer Agreement:

AT&T and the OST will negotiate a mutually acceptable Transfer Agreement (the "Transfer Agreement"), which agreement shall contain the terms set forth in this Term Sheet and customary representations and warranties, covenants and other provisions for transactions of this nature.

~~ETC or Broadband Stimulus Funding:~~

~~The Parties agree to work cooperatively to effectively essentially transfer ETC status that currently exists on the Pine Ridge reservation to the OST. To the extent the OST requests assistance from AT&T to seek ETC or broadband stimulus funding, AT&T will make reasonable efforts to support any application for ETC designation and the approval of such application at the same time as the FCC approves the transfer spectrum included in of the Acquired Assets. s for such funding. The OST acknowledges that AT&T makes no representations about its intent or ability to obtain ETC status or broadband stimulus funding.~~

Spectrum:

~~The OST AT&T acknowledges that in order to operate the Acquired Assets, the it will need to obtain cellular, microwave, and any other spectrum currently used to provide service to individuals on the Pine Ridge reservation is required. AT&T agrees to file the necessary applications with the FCC to transfer the right to use the spectrum for the Acquired Assets by an agreed upon date from parties other than AT&T.~~

CDMA Network:

~~The OST acknowledges that AT&T will not be operating a CDMA network, even though the current network operates using CDMA technology. Accordingly, the OST further AT&T acknowledges that the to the extent the OST will requires back office services, roaming, switching or other operational support on a transitional basis, and that such operational support shall be provided by AT&T or Verizon, subject to an agreement between the applicable Parties, for no longer than one year. the OST will obtain such transitional services from parties other than AT&T.~~

Service Agreement:

Concurrent with the execution of the Transfer Agreement, the parties will amend OST's ~~[appropriate description of the service agreement to be inserted]~~ Tate Woglaka Service Agreement (the "Service Agreement") with Verizon to provide that the Service Agreement will continue in effect until the earlier of (x) the Closing ~~the settlement of all~~

outstanding issues, including payment of revenue sharing due the OST or (y) the termination of the Transfer Agreement in accordance with its terms. At the Closing, the contracts with customers with a billing address on the Reservation that are currently served under the Service Agreement will be transferred to the OST.

Closing Conditions:

Customary closing conditions for transactions of this type, including, without limitation: (i) regulatory approval (if any) and completion of regulatory filings, (ii) no legal prohibition on the transactions contemplated by the Transfer Agreement, (iii) the closing of the transactions contemplated by the Verizon Purchase Agreement having occurred, (iv) accuracy of each party's respective representations and warranties and (v) compliance by each party with its respective covenants and obligations.

Termination of the Transfer Agreement:

By either party, only upon material breach, failure of the Closing to occur within ~~six~~^{four}~~5~~ months of the execution of the Transfer Agreement or termination of the Verizon Purchase Agreement.

Arbitration:

Any controversy or claim between the OST and AT&T arising out of or relating to the Transfer Agreement or any other transaction documents will be finally settled by arbitration in [South Dakota] administered by the American Arbitration Association under its Commercial Arbitration Rules then in effect.

Except for the next sentence, this Term Sheet shall not be binding on either the OST or AT&T, and neither party shall have any obligation until the Transfer Agreement or any other definitive transaction documents have been duly executed by both parties. Each of the OST and AT&T agree and acknowledge that the Confidentiality Agreement, dated April 13, 2010, between the OST and AT&T (the "Confidentiality Agreement") shall remain in full force and effect, and be binding upon each of them, following the execution of this Term Sheet, and that this Term Sheet, including the existence thereof, constitutes "Evaluation Material" (as such term is defined in the Confidentiality Agreement).

Upon execution of this Term Sheet, AT&T will commence the preparation of the Transfer Agreement implementing the foregoing terms and reflecting such other terms as the parties may agree.

[Remainder of Page Intentionally Left Blank]

Agreed the ____ day of April 2010 by:

AT&T MOBILITY LLC

Name:

Title:

OGLALA SIOUX TRIBE

Name:

Title:

ATTACHMENT 3:

OST Consolidated Proposal to AT&T

TO: AT&T Representatives (contact: Wauneta Browne)

FROM: Joe Red Cloud

DATE: May 14, 2010

SUBJECT: OST Key Points in Negotiations with AT&T:

1. Existing Property On Reservation

- a. **AT&T agrees to transfer the following property on the reservation to the Tribe:**
 - Antenna Towers
 - CDMA Radios and associated equipment
 - Microwave radios and associated equipment
 - Other equipment, facilities, and services located on reservation (retail locations, etc.)
 - 850 Mhz Spectrum used by existing CDMA network
 - Other licenses, such as microwave licenses, used to interconnect cell sites and provide services on reservation
- b. **Tribe will assume the universal service obligations associated with the wireless network on the reservation, including the obligation to provide continued Lifeline service at \$1 per month**
 - All of the property on the reservation was bought for and paid by the more than \$46M in universal service support received by Western Wireless/Alltel/Verizon

2. Other Property On Reservation

- a. **AT&T agrees to transfer other property that can only be used on the reservation:**
 - 1.9 GHz Spectrum
 - Other

3. GSM Support

- a. **Tribe agrees to provide GSM service to AT&T customers**
 - The Tribe will install GSM radios on antenna towers to support AT&T subscribers. AT&T will offer to sell GSM radios to the Tribe at AT&T's cost.
 - Need to established most favored roaming agreement
 - On account of the Tribe providing GSM service and roaming to AT&T, this will significantly benefit AT&T by relieving AT&T from

the build-out costs associated with establishing a GSM network on the reservation and the associated operating costs for what would be a very minimal number of subscribers.

4. Transitional Services

- a. Unless the Tribe negotiates a transition agreement with Verizon, AT&T agrees to provide transitional services to the Tribe for up to one year**
- Establish transitional services agreement to facilitate the transfer of the property on the reservation to the Tribe without service disruption.
 - AT&T to provide transitional services, much like Verizon/AT&T provide transitional services for their property transfer.
 - The Tribe will provide switching and all of the back office support associated with operating a stand-alone wireless network within one year of transfer of property to the Tribe.

5. Tribal ETC Status

- **AT&T will support the Tribe's attempts to obtain Eligible Telecommunications Carrier status from the FCC .**